IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 28488 of 2005(N)

OS.26/2002 of SUB COURT, HOSDRUG

.....

PETITIONER:

A.HAMEED HAJI, AGED 53 YEARS,
S/O.BAVA MAISTRY, AJANNUR KADAPPURAM IN
AJANNUR VILLAGE, HOSDRUG.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.S.MAMMU

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
DISTRICT COLLECTOR, KASARAGOD.

2. DISTRICT COLLECTOR, KASARAGOD.

3. TAHSILDAR, KASARGOD.

4. CHAIRMAN,
LEGAL SERVICE COMMITTEE, HOSDURG.

BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.28488/2005

APPENDIX

PETITIONER'S EXTS:

EXT.P1	COPY OF THE CERTIFICATE DTD. 17/9/2004 ISSUED BY THE HON'BLE SUB JUDGE, HOSDRUG.
EXT.P2	COPY OF THE ORDER NO.L.DIS.36219/04/L5 DATED 16/10/2004 TO THE DISTRICT COLLECTOR, KASARAGOD.
EXT.P3	COPY OF THE REPLY ON 24/6/2005, THE SECRETARY OF LEGAL SERVICES COMMITTEE, HIGH COURT.
EXT.P4	COPY OF THE LETTER NO.1321/C/05/KELSA DATED 17/06/2005 FROM THE SECRETARY OF KERALA STATE LEGAL SERVICES AUTHORITY, KOCHI.
EXT.P5	COPY OF THE ORDER NO.L.DIS.L5-6388/2005 (III) DATED 22/7/2005 OF THE DISTRICT COLLECTOR, KASARAGOD.
EXT.P6	PHOTOCOPY OF THE COMMUNICATION OF LEGAL SERVICES COMMITTEE DATED 17/6/2005 AND THE AFFIDAVIT SUBMITTED BY THE PETITIONER BEFORE THE SUB COURT, HOSDRUG.
EXT.P6A	PHOTOCOPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE SUB COURT, HOSDURG.

P.R.RAMAN J.

W.P.(C).No.28488 OF 2005

Dated this the 11th day of July, 2007

JUDGMENT

Petitioner was the plaintiff in O.S.NO.26/2002 before the Sub Court, Hosdrug. That is a suit for damages. The matter was referred to the Adalath and settlement was reached in the Adalath on 11/9/2004. Thereafter, the Sub Court, Hosdrug issued Ext.P1 certificate for refund of the court fee paid. This was submitted by the petitioner before the District Collector, who in turn referred the matter to the Tahsildar. The Tahsildar by Ext.P5 opined that since the matter was settled in the Adalath and the court fee was paid in the suit, proper application should be made to the court and to obtain orders. Thereafter, the petitioner moved the Sub Court by filing an application; but the same was turned without even numbering with an endorsement that the Secretary, High Court Legal Services Committee may explore whether the petitioner is eligible to give free legal aid and to consider his case for rendering legal aid. Ext.P3 is the communication issued to the petitioner by the High Court Legal Services Committee informing the petitioner that his remedy is only to approach the High Court. Ext.P4 is a communication

issued by the Kerala State Legal Services Authority, as per which the Secretary, High Court Legal Services Committee was informed that the Court while ordering refund of court fee under Section 21 of the Legal Services Authorities Act, 1987, can invoke Sub Section 2 of Section 2 of the Legal Services Authorities Act and extend the benefit of refund of court fee and since this has not been done, the alternative for the petitioner is to approach this Court.

2. The question as to whether the petitioner is entitled for refund of the court fee paid when the matter was settled, has been considered by this Court in a decision reported in **Vasudevan v. State of Kerala (2003 (3) KLT 993).** It was held that in the light of the provisions contained in Section 16 of the Court Fees Act, 1870 read with the provisions contained in the Legal Services Authorities Act, 1987 and Section 89(2) of the Code of Civil Procedure, the whole of the court fee is liable to be refunded. This was followed in a subsequent decision reported in **Aboobacker v. District Collector (2006(3) KLT 670)** wherein also this Court noticed that there is no provision in the Kerala Act for refund of the entire court fee. But Section 21 of the Legal Services Authorities Act, which is a central Act, binds the parties to the proceedings and so the petitioner is

entitled to get refund of the entire court fee paid.

In the above circumstances, if the application is re-presented within two weeks, the court below shall pass appropriate orders in the light of the abovesaid decision.

Writ Petition is disposed of as above.

Sd/-
P.R.RAMAN,
Judge.

kcv.